

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1105 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

RAYJIBHAI HIRABHAI FULMALI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HL JANI, AGP, for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 11/08/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 31-1-98 passed by the Police Commissioner, Vadodara City, under Section 3 (2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the Act") has challenged the legality and validity of the said order of his detention.

In the grounds of detention, the detaining

authority has placed reliance on three prohibition cases registered against the petitioner two of which were pending in the Court and one was under investigation when the order of detention was passed. Further reliance is also placed on the statements of three witnesses of the incidents of 11-11-97, 2-1-98 and 26-12-97. The concerned witness of the incident of 11-11-97 has alleged that the witness was beaten by the detenu and his associates when he refused to carry the liquor bags in his rickshaw. On 2-1-98 the concerned witness was beaten when he refused to conceal the three bags of liquor in his house and on 26-12-98 the concerned witness was beaten on the ground that he was informant of the police.

On all the occasions people gathered and when the petitioner and his associates rushed towards the crowd, the people started running helter-skelter and an atmosphere of fear and terror was created and even tempo of life was disturbed.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a boot-legger within the meaning of Section 2(d) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been challenged by the petitioner by way of this petition.

On behalf of the petitioner, it was contended that even if the allegations made against the petitioner are accepted as true, it is too much to brand him as a boot legger. The Supreme Court in Piyush Kantilal Mehta vs Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 on similar allegations made against the detenu in that case has held that the offences alleged against the detenu in the order of detention and also the allegations made by the witnesses could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area giving rise to the question of maintenance of public order. The order of detention could not therefore be upheld. In view of this decision, it is not possible for me to uphold the order of detention in the present case. The allegations made against the petitioner by the witnesses are minor incidents of beating by the petitioner and which could not be said to create feeling of insecurity among the general public. In view of this, the order of detention is vitiated.

In the result, this petition is allowed. The order of detention dated 31-1-98 is quashed and set aside. The detenu Sayjibhai Hirabhai Fulmali is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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